

WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)
Act 317 of 1969

418.701a Agreement for sale of state accident fund assets and assumption of liabilities; conditions; consideration; authority of state administrative board or executive director of state accident fund; jurisdiction of court; cause of action; liens, claims, or interests; establishing terms and conditions; evaluating and rejecting proposals; report.

Sec. 701a. (1) The state administrative board created pursuant to 1921 PA 2, MCL 17.1 to 17.3, may authorize the executive director of the state accident fund to enter into and consummate, under terms and conditions approved by the state administrative board, an agreement in the name of the state of Michigan for the sale of all or substantially all of the assets of the state accident fund to a permitted transferee, and assumption of all or substantially all of the liabilities of the state accident fund by the permitted transferee subject to the following conditions:

(a) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized investment banking firm that the consideration for the assets to be transferred is fair from a financial point of view.

(b) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized actuarial firm that the assets of the state accident fund transferred to a permitted transferee are adequate to permit the payment of all liabilities under policies of insurance assumed by the permitted transferee based upon sound actuarial principles.

(c) The state administrative board shall have determined before the effective date of the transfer that the consideration for the assets to be transferred is among the highest cash offers by a qualified bidder as provided for in this section not using the state accident fund assets, is fair from a financial point of view and is sufficient such that the credit of the state shall not have been granted to, nor in aid of any person, association, or corporation, public or private. A person seeking to purchase the state accident fund shall not include as part of its bid the existing assets of the state accident fund. The state administrative board with the advice of the insurance commissioner shall make a determination that the bidder has adequate resources to capitalize the permitted transferee, and will operate the permitted transferee as a Michigan domestic insurer pursuant to chapter 51 of the insurance code of 1956, 1956 PA 218, MCL 500.5100 to 500.5114.

(d) The state administrative board, as it considers appropriate from time to time, may consult with or receive information or recommendations from the insurance commissioner or any other person considered appropriate by the state administrative board, for purposes of assisting the state administrative board in making a final decision in evaluating 1 or more offers from any person seeking to become or establish a permitted transferee for purposes of acquiring the state accident fund pursuant to this section.

(e) The state administrative board shall give due consideration to minority, women, and persons with disabilities owned businesses and prospective bidders that have minority, women, and persons with disabilities owned business participation. A prospective bidder shall indicate in its proposal the name, address, and amount of equity participation for each minority, women, or persons with disabilities owned and operated business that is included as part or all of the bidding group.

(2) The consideration in the transaction referred to in subsection (1) shall be the property of the state of Michigan. The consideration shall not be subject to the assessment of fees pursuant to section 713. The consideration shall be appropriated as follows:

(a) Not more than 1% of the consideration to a separate segregated fund to be held by the state treasurer and administered by the commissioner of insurance and the executive director of the state accident fund for the purposes of winding up the affairs of the state accident fund pursuant to section 701(4).

(c) The remainder to the general fund for transfer to the countercyclical budget and economic stabilization fund established pursuant to section 351 of the management and budget act, 1984 PA 431, MCL 18.1351.

(3) The state administrative board or the executive director of the state accident fund with the authorization of the state administrative board, in furtherance of the transactions permitted under this section, may do any of the following:

(a) Sell, convey, lease, exchange, transfer, or otherwise dispose of the assets and liabilities including any real or personal property of the state accident fund, wherever situated.

(b) Sell, exchange, transfer, or otherwise dispose of bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different businesses, or governmental or other activities, including banking corporations or trust companies.

(c) Have and exercise all powers necessary or convenient to effect or complete the transactions permitted under this section.

(4) A court in this state shall not have jurisdiction to enjoin or otherwise restrain the transfer of assets and

liabilities under this section. The court of claims shall have exclusive jurisdiction over any claims asserted against the state of Michigan arising out of or related to this section.

(5) No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the permitted transferee arising out of the sale of assets or other transactions permitted under this section, except that this subsection shall not limit the rights or remedies of the holder under a policy of insurance issued by the state accident fund and assumed by the permitted transferee to contest the insurance coverage arising under a policy of insurance issued by the state accident fund. No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the state of Michigan or any political subdivision of the state arising out of the sale of assets or other transactions permitted under this section, or arising under policies of insurance issued by the state accident fund.

(6) Except for taxes otherwise imposed by the state of Michigan or any political subdivision of the state or any fees imposed pursuant to section 713, the sale of assets permitted under this section shall be free and clear of any liens, claims, or interests of the state of Michigan or any person claiming through or under the state of Michigan.

(7) The state administrative board for and on behalf of the state of Michigan and subject to the requirements of this section shall have the right in its sole and absolute discretion to establish the terms and conditions of any proposal for the sale of the state accident fund on the basis of its own criteria, to evaluate those proposals by its own criteria, and to reject any or all proposals without assigning any reasons. If 2 or more prospective bids are substantially similar in terms and conditions and the dollar amount of the bids are within 5% of each other, the board shall give preference to a bidder agreeing to retain, for a period of 5 years after the effective date of the transfer, not less than 75% of the employees employed by the accident fund on the effective date of the transfer. The board shall not consider a bidder who does not agree to offer health coverage without preexisting conditions or exclusions to employees employed by the accident fund on the effective date of the transfer and who are retained by the bidder. The state administrative board shall permit a group that is composed solely of a majority of the employees of the state accident fund the opportunity to meet the bid that the board determines is the most favorable for the sale of the fund. If the employees meet this bid, including the standards and preferences of this section, they must do so within 60 days of the presentation to the state administrative board. The employees shall be given the opportunity to form an insurer for the purpose of acquiring the fund and shall be permitted a period of time not to exceed 10 years within which to consummate the sale of the state accident fund. The state administrative board for and on behalf of the state of Michigan expressly reserves the right without giving any reasons and without any liability therefor, at any time and in any respect, to amend or terminate any activities with respect to the sale of the state accident fund, commence or terminate discussions with any or all persons seeking to purchase the state accident fund, reject any or all proposals to acquire the state accident fund, and to negotiate and consummate the sale of the state accident fund with any person. If a proposal submitted by a nonprofit health care corporation operating under the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, is accepted, the nonprofit health care corporation, in addition to payment of the purchase price, shall remit to the state treasurer an additional amount calculated by the state treasurer as being equal to the single business tax that a nonprofit health care corporation would have paid on the accumulated assets used to acquire the accident fund if the nonprofit health care corporation were a for-profit mutual insurer.

(8) Nothing in this section shall require the state administrative board to approve or authorize any transaction for the sale of the state accident fund.

(9) Not less than 30 days before the transfer is consummated with a permitted transferee, the state administrative board shall make a report to the legislature providing the name and business address of each bidder; the amount, terms, and conditions of each respective bid; and the copies of the opinions required by subsection (1)(a) and (b).

History: Add. 1993, Act 198, Eff. Dec. 28, 1994;—Am. 1998, Act 74, Imd. Eff. May 4, 1998.

Compiler's note: Section 3 of Act 198 of 1993 provides as follows:

“Section 3. (1) Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

“(2) Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act.”

The following provision of this section, as added by Act 198 of 1993, was vetoed by the governor on October 18, 1993:

“(b) An amount equal to \$5,500,000.00 to the pension reserve fund and the dental-vision reserve fund created by section 11 of the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being section 38.11 of the Michigan Compiled Laws, to be divided between the funds in the same proportion that each bears to the total percent of payroll charged to state agencies for the cost of these benefits for the fiscal year ending September 30, 1994.”

Popular name: Act 317